

**REMARKS/ARGUMENTS**

Reconsideration of this application as amended is respectfully requested. Claims 58 and 86 have been amended; and claims 1-57, 59-62, 64, 84 and 87-96 were previously cancelled. Therefore, claims 58, 63, 65-83, 85-86 and 97-107 remain in this application and are again presented for the Examiner's consideration in view of the following comments.

It is respectfully submitted that good cause has been demonstrated for the entry of the present amendment, not only since it overcomes the Examiner's rejections as set forth in the Official Action, thus clearly reducing the number of issues for purposes of appeal, but since the present response places all of the remaining claims in condition for immediate allowance, as will be more clearly demonstrated below.

In the Official Action, claims 86 and 97 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,410,645 to Schwartzman ("*Schwartzman*"). Applicant respectfully traverses this rejection.

Applicant initially notes the requirement in claim 86 for

said applicator including an assembly skirt having a free end and including an annular bead formed on an inside surface of said assembly skirt and spaced from both said free end of said assembly skirt and from said fixing means.

Applicant submits that *Schwartzman* fails to teach this feature.

More particularly, *Schwartzman* teaches an applicator having fixing means in the form of a skirt having an inner annular groove spaced from the free end of the skirt. The skirt fits over the neck of a bottle and receives the lip of the bottle in the annular groove to hold the applicator in assembled relationship to the bottle. (*Schwartzman* col. 2 ll. 8-12.) As

applicant understands the Official Action, the Examiner has contended that the inner annular groove 22 of *Schwartzman* comprises fixing means, and that a surface of the annular groove 22 comprises the annular bead of claim 86. However, applicant notes that, under this interpretation, the annular bead and the fixing means are overlapping with one another and thus fail to meet the requirement of claim 86 that the annular bead be spaced from the fixing means.

In view of the foregoing, applicant submits that claim 86 is not anticipated by *Schwartzman* and is in condition for immediate allowance, which action is respectfully requested.

Claim 97 depends from claim 86 and includes all of the limitations of that claim. For at least this reason, applicant submits that claim 97 also distinguishes patentably over *Schwartzman*. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 105 has been rejected under 35 U.S.C. § 103(a) as being obvious over *Schwartzman* in view of U.S. Patent No. 4,555,194 to Hammond ("*Hammond*"). Applicant respectfully traverses this rejection in view of the above arguments and for the reasons set forth below.

Applicant initially reiterates the contentions set forth above with regard to the clear deficiencies of *Schwartzman*. *Hammond* plainly fails to overcome these deficiencies. That is, nothing in *Hammond* suggests an annular bead formed on an inside surface of the assembly skirt and spaced from both the free end of the assembly skirt and from the fixing means. Moreover, if one were to replace the annular groove 22 of *Schwartzman* with the screw type connection of *Hammond*, such modification would also eliminate the annular bead formed by the groove. In view of the foregoing, applicant submits that claim 105 patentably distinguishes over *Schwartzman* and *Hammond*, either alone or in the combination which the

Examiner contends can be made therefrom. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 58, 63, 77-83, 98-103, 106 and 107 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 3,121,906 to Hulsh ("*Hulsh*") in view *Schwartzman*. Applicant respectfully traverses this rejection in view of the foregoing amendments and for the reasons set forth below.

Applicant notes the requirement in claim 58 for

said assembly skirt including skirt fixing means cooperable with said second fixing means on said neck of said receptacle and a sealing surface that abuts said shoulder and is spaced from said skirt fixing means when said accessory is fixed to said neck.

Applicant submits that neither *Hulsh* nor *Schwartzman*, either alone or in combination, teaches or suggests this limitation.

*Hulsh* discloses a container 10 having a closure cap 20 and an applicator 30. (*Hulsh* col. 2 ll. 36-40.) The container includes a neck having a first portion 12 with external threads 13, a second portion 15 with external threads 16 and a shoulder 14 connecting the first and second portions of the neck. (*Hulsh* col. 2 ll. 44-49.) The applicator 30 has a pair of concentric cylindrical skirts 31 and 34 spaced apart by an annular top wall 36. Internal threads 35 on skirt 34 cooperate with the threads 13 on the neck of the container to removably secure the applicator to the container. (*Hulsh* col. 2 ll. 64-72.) The closure cap 20 cooperates with threads 16 on the neck of the container to prevent the contents of the container from being expelled. (*Hulsh* col. 2 ll. 54-60.) While acknowledging that *Hulsh* fails to teach an assembly skirt including a sealing surface that abuts the shoulder, the Examiner has cited *Schwartzman* as providing this missing teaching. *Schwartzman*,

however, is clearly incapable of doing so.

As noted above, *Schwartzman* teaches an applicator having fixing means in the form of a skirt with an inner annular groove for assembly on the lip of a bottle. As contended by the Examiner, a surface of the annular groove forms the sealing surface recited in claim 58. Even if applicant agreed with that contention, the combination suggested by the Examiner would still not meet the requirements of claim 58.

Firstly, the combination of *Schwartzman* with *Hulsh* proposed by the Examiner would require that the threaded portion 35 of *Hulsh* be replaced with the annular groove 22 of *Schwartzman*. The result of such combination would be an overlap between the fixing means on the skirt and the sealing surface and, as such, would fail to meet the requirement that the sealing surface be spaced from the skirt fixing means when the accessory is fixed to the neck. Furthermore, in any such combination, it is not seen how the sealing surface would abut the shoulder 14 connecting the first portion 15 to the second portion 12 of the neck of *Hulsh*. Any such sealing surface provided by the groove 22 of *Schwartzman* would be disposed adjacent the neck portion 12 of *Hulsh* below the shoulder 14, and therefore would not in any way abut the shoulder.

In view of the foregoing, applicant submits that claim 58 patentably distinguishes over *Hulsh* and *Schwartzman*, either alone or in any combination which the Examiner contends can be made therefrom. Accordingly, applicant submits that claim 58 is in condition for immediate allowance.

Claims 63, 77-83, 98-103, 106 and 107 depend either directly or indirectly from claim 58 and include all of the limitations of that claim. For at least this reason, applicant believes these dependent claims to also distinguish over the combination of *Hulsh* and *Schwartzman* such as to warrant their immediate allowance, which action is respectfully requested.

Claims 65-72, 74-76 and 104 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Hulsh* in view of *Schwartzman*, and further in view of U.S. Patent No. 6,457,476 to Elmer et al. ("*Elmer*"). This rejection is respectfully traversed in view of the above amendments and arguments, and for the reasons set forth below.

Applicant would reiterate the contentions set forth above with regard to the clear deficiencies of both *Hulsh* and *Schwartzman*, and in their attempted combination. Plainly, *Elmer* fails to overcome these deficiencies. The Examiner has cited *Elmer* for teaching an applicator having a plurality of teeth with orifices for dispensing a substance through the teeth. However, applicant notes that *Elmer* is silent as to a container having a neck with first and second portions and a shoulder connecting the first portion to the second portion, a sealing surface that abuts the shoulder, and a sealing surface that is spaced from the skirt fixing means when the accessory is fixed to the neck of the container. For at least this reason, applicant submits that claims 65-72, 74-76 and 104 would not be obvious from the combined teachings of *Hulsh*, *Schwartzman* and *Elmer*, including any combination which the Examiner contends can be made therefrom. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 73 has been rejected under 35 U.S.C. § 103(a) as being obvious over *Hulsh* in view of *Schwartzman* and *Elmer*, and further in view of U.S. Patent No. 2,270,529 to Kirschenbaum ("*Kirschenbaum*"). Applicant respectfully traverses this rejection in view of the above amendments and arguments, and for the reasons more fully set forth below.

Applicant would again reiterate the contentions set forth above with regard to the manifest deficiencies of *Hulsh*, *Schwartzman* and *Elmer*, and in particular, in their attempted combination. *Kirschenbaum* has been cited as teaching a comb

applicator having at least one tooth with a groove extending therein, and thus clearly fails to overcome the deficiencies of *Hulsh*, *Schwartzman* and *Elmer* noted above. Accordingly, applicant submits that claim 73 patentably distinguishes over *Hulsh* in view of *Schwartzman*, *Elmer* and *Kirschenbaum* such as to warrant its immediate allowance. In view of the foregoing, withdrawal of this rejection is respectfully requested.

Claims 58 and 85 have been rejected under 35 U.S.C. § 103(a) as being obvious over *Schwartzman* in view of *Hulsh*. This rejection is respectfully traversed in view of the amendments and arguments set forth above, and for the reasons which follow.

Applicant has discussed above the failure of both *Schwartzman* and *Hulsh*, either alone or in combination, to teach a kit including a receptacle and an accessory, in which the accessory includes a sealing surface that abuts the shoulder of the receptacle and is spaced from skirt fixing means when the accessory is fixed to the neck of the receptacle. In view of the failure of these references in this regard, it is respectfully submitted that claims 58 and 85 distinguish patentably over *Schwartzman* and *Hulsh* such as to warrant their immediate allowance. Withdrawal of this rejection is therefore respectfully requested.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that she telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which she might have.

If there are any additional charges in connection with

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this requested amendment, the Examiner is authorized to charge  
Deposit Account No. 12-1095 therefor.

Dated: March 9, 2009

Respectfully submitted,

Electronic signature: /Robert B. Cohen/  
Robert B. Cohen

Registration No.: 32,768  
LERNER, DAVID, LITTENBERG, KRUMHOLZ &  
MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant

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